

REMARKS

In response to the above-identified Office Action, Applicant amends the application and seeks reconsideration thereof. In this response, Applicant amends Claims 1, 7, 11 and 15. Applicant cancels Claims 21-25. Applicant does not add any new claims. Accordingly, Claims 1-20 are pending.

I. Election/Restriction Requirement

The Patent Office requires restriction under 35 U.S.C. 121. Specifically, the Patent Office requires that Applicant elects either the embodiments covered by Claims 1-20 or the embodiments set forth in Claims 21-25.

In response, Applicant confirms the prior election to prosecute the embodiments set forth in Claims 1-20. As indicated herein, Applicant cancels Claims 21-25.

II. Claims Rejected Under 35 U.S.C. §112

The Patent Office rejects Claims 7, 8, 15 and 16 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Patent Office states that it is unclear what is meant by the phrase "approximately equal or less than a known tissue thickness." In response, Applicant amends Claims 7 and 15 as indicated herein to overcome the rejection.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 7 and 15. Claims 8 and 16 depend from Claims 7 and 15, respectively. Thus, the rejection of Claims 8 and 16 should also be withdrawn.

III. Claims Rejected Under 35 U.S.C. §102

The Patent Office rejects Claims 1, 5, 6, and 10 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,873,835 to Hastings, et al. ("Hastings").

In order to anticipate a claim, the relied upon reference must disclose every limitation of the claim. Among other limitations, amended independent Claim 1 recites an interface to a balanced

circuit having a heating element and a variable resistor as resistive circuit elements. Applicant submits that at least this limitation is not disclosed by Hastings.

In making the rejection, the Patent Office relies on Hastings to show an elongate member suitable for insertion into a body, at least one thermally conductive heating element coupled to a portion of the elongate member and an anemometry circuitry interface electrically coupled to the heating element.

In response, Applicant submits that Hastings fails to disclose an interface to a balanced circuit having a heating element and a variable resistor as resistive circuit elements, as recited in Applicant's amended independent Claim 1. Rather, Hastings merely discloses potentiometers (Col. 5, lines 12-15; Col. 13, lines 59-62), which are not the same as a variable resistor acting as a resistive circuit element of a balanced circuit, as recited in Applicant's amended independent Claim 1. Thus, at least this limitation is not disclosed by Hastings.

Accordingly, Applicant respectfully requests withdrawal of the rejection of amended independent Claim 1. Claims 5, 6, and 10 depend from amended independent Claim 1 and contain all of the limitations thereof. Thus, the rejected dependent claims are not anticipated at least for the same reasons as amended independent Claim 1.

The Patent Office rejects Claims 1-3, 5, 6, 9, 11, 12, 14 and 17 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,431,010 to Joffe ("Joffe").

In making the rejection, the Patent Office relies on Joffe to show an elongate member suitable for insertion into a body, at least one thermally conductive heating element coupled to a portion of the elongate member, and an anemometry circuitry interface coupled to the heating element.

In response, Applicant submits that Joffe does not disclose a balanced circuit having a heating element and a variable resistor as resistive circuit elements, as recited in Applicant's amended independent Claims 1 and 11. In this regard, Applicant submits that Joffe fails to disclose any type of variable resistor, much less one included as a resistive circuit element of a

balanced circuit. Therefore, at least this limitation of Applicant's amended independent Claims 1 and 11 is not disclosed by Joffe.

Accordingly, Applicant respectfully requests withdrawal of the rejection of amended independent Claims 1 and 11. Claims 2, 3, 5, 6, 9, 12, 14 and 17 depend from amended independent Claims 1 and 11, respectively. Thus, the rejected dependent claims are not anticipated at least for the same reasons as their respective independent claims.

IV. Claims Rejected Under 35 U.S.C. §103(a)

The Patent Office rejects Claims 4 and 13 under 35 U.S.C. 103(a) as being unpatentable over Joffe in view of U.S. Patent No. 3,470,604 to Zenick ("Zenick").

In order to render a claim obvious, the relied upon references must teach or suggest every limitation of the claim such that the invention as a whole would have been obvious at the time the invention was made to one skilled in the art. In making the rejection, the Patent Office relies on Joffe as described above and relies on Zenick to show a stainless steel needle.

In response, Applicant notes that Claims 4 and 13 respectively depend from Applicant's amended independent Claims 1 and 11 and contain every limitation of their respective independent claims. Thus, Claims 4 and 13 recite a balanced circuit having a heating element and a variable resistor as resistive circuit elements. Applicant submits that at least this limitation is neither taught nor suggested by the cited references in combination.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claims 4 and 13.

The Patent Office rejects Claim 18 under 35 U.S.C. 103(a) as being obvious over Joffe in view of Hastings.

Claim 18 depends from amended independent Claim 11 and contains all of the limitations thereof. Specifically, Claim 18 recites a balanced circuit having a heating element and a variable resistor as resistive elements. As argued above, the cited references, taken alone or in combination, fail to teach or suggest at least this limitation.

Accordingly, Applicant respectfully requests withdrawal of the rejection of Claim 18.

CONCLUSION

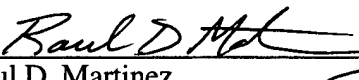
In view of the foregoing, it is believed that all claims now pending (1) are in proper form, (2) are neither obvious nor anticipated by the relied upon art of record, and (3) are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

Respectfully submitted,

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Dated: 11/3, 2003


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CERTIFICATE OF MAILING:

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on November 3, 2003.


Lillian E. Rodriguez

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